In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1174

AIR LINE DISPATCHERS' ASSOCIATION, ET AL., PETITIONERS

v.

CIVIL AERONAUTICS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE CIVIL AERONAUTICS BOARD IN OPPOSITION

OPINIONS BELOW

The court of appeals wrote no opinion. The opinions and orders of the Civil Aeronautics Board (Pet. App. 3a-8a, 115a-117a) and the initial decision of the administrative law judge (Pet. App. 9a-87a) are not yet officially reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1a-2a) was entered on December 17, 1974. The petition for a writ of certiorari was filed on March 17, 1975. The jurisdiction of this Court is invoked under Section 1006 (f) of the Federal Aviation Act (49 U.S.C. 1486(f)) and 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Civil Aeronautics Board, in approving agreements among air carriers establishing the Airline Industrial Relations Conference, properly determined that the agreements are consistent with the Railway Labor Act, as amended, 45 U.S.C. 151, *et seq.*

STATUTES INVOLVED

The relevant sections of the Federal Aviation Act, of 1958, 72 Stat. 731, as amended, 49 U.S.C. 1301, *et seq.*, and the Railway Labor Act, 44 Stat. 577, as amended, 45 U.S.C. 151, *et seq.*, are set forth at Pet. App. 119a-122a.

STATEMENT

Pursuant to Sections 401(k)(4) and 412 of the Federal Aviation Act of 1958, 49 U.S.C. 1371(k)(4) and 1382, the Civil Aeronautics Board must assure that cooperative working arrangements among air carriers are consistent with the national labor policy and with the Railway Labor Act, as amended, 45 U.S.C. 151, *et seq.*, are not adverse to the public interest, and are otherwise in accordance with the Federal Aviation Act.

On April 6, 1971, twelve of the nation's air carriers filed for the Board's approval two agreements establishing the Airline Industrial Relations Conference ("AIR Conference") (Pet. App. 89a, 94a-109a). AIR Conference membership is open to any certificated American carrier, and members share costs in proportion to overall carrier revenues (*id.* at 15a). The principal functions of AIR Conference are to prepare and conduct coordinated collective bargaining for its members, under power of attorney, with the various unions of their employees (*id.* at 16a). Upon protests by these unions, the Board ordered a hearing to determine whether the agreements are in the public interest, and, more specifically, whether they violate the Railway Labor Act ("RLA"), adversely affect labor-management relations, violate the antitrust laws or otherwise restrain competition (*id.* at 111a-113a).

After a full hearing, the administrative law judge determined that the agreements should be approved, provided certain modifications were made. First, he held that the irrevocability of a carrier's power of attorney to AIR Conference for collective bargaining violated Section 2, First, of the RLA (45 U.S.C. 152, First) because it in effect imposed multi-employer collective bargaining on the unwilling unions (Pet. App. 34a-39a).[1] Second, he found that the imposition of liability on members for revocation of the power of attorney and independent negotiation of a contract also violated the RLA (*id.* at 72a-74a). With these provisions removed,[2] he ruled that the agreements would conform with the RLA and would be virtually identical to the agreement approved by the Board in the face of similar claims of violation of the RLA years earlier in *Airlines Negotiating Conf. Agreements*, 8 C.A.B. 354 (*id.* at 43a). AIR Conference, like its predecessor, did not impose multi-employer bargaining on any party (*id.* at 32a-33a); then, as now, an individual carrier's selection of an organization like AIR Conference as its bargaining representative was protected by Section 2, Third, of the RLA (*id.* at 44a-45a). The judge held that the coordination by the individual carriers in collective bargaining through AIR Conference was consistent with the RLA's requirement that parties exert every reasonable effort to make and keep agreements (*id.* at 28a-30a), and also determined that the interaction of AIR Con-

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[1]As originally proposed, the AIR Conference articles of association barred a carrier that had given AIR Conference a power of attorney to represent it in collective bargaining from revoking that power until the conclusion of negotiations, and made withdrawal from the organization, normally valid on ninety days' notice, ineffective if made during negotiations until ninety days after completion of the negotiations (Pet. App. 15a-16a).

[2]He also directed that the board of directors be chosen so as to give each member carrier equal representation (Pet. App. 80a).

ference and the Mutual Aid Pact (see n. 6, *infra*) would not violate the RLA (*id.* at 47a-50a).[3]

The Board adopted the decision of the administrative law judge, including provisions authorizing the Board to inspect AIR Conference's records and retaining jurisdiction to impose such further conditions as the public interest may require (*id.* at. 3a-8a).[4] After the carriers modified the agreements to conform to its decision, the Board approved them (*id.* at 115a-117a).

The court of appeals, in a *per curiam* order, affirmed the Board, holding that the "factual findings of the Board are supported by substantial evidence in the record taken as a whole, and the Board's conclusions are free from reversible legal error" (*id.* at 2a). The court also noted the Board's "recognition of its responsibility of continuing oversight of the activities of the AIR Conference to make certain that it operates within the law and in the public interest, and to act promptly in the event it does not" (*ibid.*).

ARGUMENT

The decision of the court of appeals affirming the Board is correct and presents no issue warranting review by this Court.

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[3]In addition, the judge determined that AIR Conference would not have an adverse impact on labor-management relations (Pet. App. 50a-53a), would have minimal effect on the economic balance of power between the carriers and the unions (*id.* at 54a-60a), and would not violate the antitrust laws or restrain competition (*id.* at 64a-66a).

[4]The Board modified the decision in several respects (composition of the board of directors; use of visitation power; lawfulness of irrevocable powers of attorney in multi-employer bargaining). These modifications are not at issue here.

Petitioners argue (Pet. 8, 10) that by approving AIR Conference the Board has allowed the carriers to violate their duty under Section 2, First, of the RLA (45 U.S.C. 152, First) "to exert every reasonable effort to make and maintain agreements * * *," and has forced the unions to engage in multi-employer collective bargaining. These arguments are founded on the assertion that AIR Conference is designed to seek a "united front" of carriers and does not have "the interests of * * * [the] particular carrier at heart * * *" (Pet. 9, 11).

Section 2, Third, of the RLA (45 U.S.C. 152, Third) assures carriers and employees the right to choose freely their bargaining representatives, without restriction as to who may be such a representative. Section 1, Sixth (45 U.S.C. 151, Sixth) defines "representative" to include organizations and corporations selected by "a carrier or group of carriers * * *." Thus, the right to select a bargaining representative includes the right to choose an outside organization that another party may also have chosen. While selection of a common representative facilitates coordination among the parties represented and increases the likelihood that they will take similar or identical bargaining positions, such coordination, which petitioners label a "united front" (Pet. 9), is not inconsistent with the good faith efforts to make and maintain agreements required by Section 2, First, of the RLA. The Board has so held since *Airlines Negotiating Conf. Agreements*, *supra*, as have the courts in analogous situations. *General Elec. Co.* v. *National Labor Relations Board*, 412 F. 2d 512, 516-520 (C.A. 2); *Minnesota Min. & Mfg. Co.* v. *National Labor Relations Board*, 415 F.2d 174, 177-178 (C.A. 8).

Nor does such coordination convert bargaining on a single-employer basis into compulsory multi-employer bargaining. Such multi-employer bargaining exists if the employers clearly intend to merge individual units into an overall group with a single spokesman authorized to bind all employers to a common contract with the union or unions. *Western States Regional Council* v. *National Labor Relations Board*, 398 F.2d 770, 773 (C.A.D.C.); cf. *National Labor Relations Board* v. *Truck Drivers Local Union*, 353 U.S. 87, 94-96. Where, however, as in the present case, each carrier retains individual bargaining authority and does not commit itself to be bound on a group basis, multi-employer bargaining does not occur. *Airlines Negotiating Conf. Agreements, supra*; *General Elec. Co.* v. *National Labor Relations Board, supra*; *Minnesota Min. & Mfg. Co.* v. *National Labor Relations Board, supra*.[5]

The facts found by the Board show that AIR Conference meets these standards. AIR Conference's "prior and primary fealty" is to the carrier that engaged it (Pet. App. 45a-46a). The Board also found that "[t]his allegiance takes precedence over any coordinating design of the AIR Conference * * *" (*id.* at 46a). Moreover, if any carrier is dissatisfied with the manner in which AIR Conference is bargaining on its behalf, it may at any

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[5]Petitioners' suggestion that precedent under the National Labor Relations Act is suspect in RLA cases (Pet. 12) ignores this Court's practice of referring to that Act "for assistance in construing the Railway Labor Act" (*Brotherhood of R.R. Trainmen* v. *Jacksonville Term. Co.*, 394 U.S. 369, 383), even if parallels between the two statutes are to be drawn with care. *Chicago & N.W. Ry.* v. *United Transp. Union*, 402 U.S. 570, 579, n. 11. Petitioners do not explain why precedents interpreting the National Labor Relations Act's requirement of good faith bargaining and prohibition of coerced multi-employer bargaining are not apposite here.

time revoke the agent's power of attorney and conduct the collective bargaining itself or through another representative (*ibid.*). Thus AIR Conference is structured to "conform to the needs and wishes of the carrier member for whom bargaining has been undertaken" (*ibid.*). These findings, which the court of appeals properly held to be supported by substantial evidence (*id.* at 2a), show that AIR Conference is also structured so as to conform to the RLA, and there is no reason for further review by this Court.[6]

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[6]Petitioners' contention that the Board, by approving AIR Conference and the Mutual Aid Pact, has sanctioned a violation of Section 2, First (Pet. 13), is unsound. The Pact is an inter-carrier agreement under which the member-carriers provide financial assistance to members whose operations are shut down by a strike. Petitioners' complaint about the approval of the Pact itself has already been heard and rejected. *Air Lines Pilots Ass'n Int'l* v. *Civil Aeronautics Board*, 502 F. 2d 453 (C.A.D.C.), certiorari denied *sub nom. Allied Pilots Ass'n* v. *Civil Aeronautics Board*, Nos. 74-549, 74-709, 74-710, March 17, 1975. To the extent that petitioners claim that the Pact, in conjunction with AIR Conference, gives the carriers too much power, or facilitates violation of the RLA, the Board carefully examined these contentions and found them unsupported (Pet. App. 47a-50a).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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